



REPLY TO
ATTENTION OF

**DEPARTMENT OF THE ARMY
JACKSONVILLE DISTRICT CORPS OF ENGINEERS
P. O. BOX 4970
JACKSONVILLE, FLORIDA 32232-0019**

Regulatory Division

PUBLIC NOTICE AUG 08 2003

Implementation of a Panther Key and a Proposed Additional Regional Condition to Nationwide Permits 12, 14, 39 and 40

TO WHOM IT MAY CONCERN: The Jacksonville District, U.S. Army Corps of Engineers (Corps), is circulating this notice to advise the public of recent changes in District procedures regarding the endangered Florida panther, and to solicit comments on proposed changes to the regional conditions of Nationwide permits (NWP) 12, 14, 39 and 40 used in the area designated as the "consultation area from the SLOPES" (Florida panther consultation area) on the attached map. This area may be adjusted over time as additional information on the Florida panther is received by the Corps. When fully implemented, these changes are designed to increase the protection afforded to the endangered Florida panther, and to better serve the public by more efficient review of Department of the Army (DA) permit applications proposed in areas utilized by the Florida panther.

BACKGROUND:


Before Federal authorization can be given for any activity proposed in a water of the United States, the proposal must be reviewed in light of several Federal laws, including the Endangered Species Act (ESA). As prescribed under Section 7(a)(2) of the ESA and its implementing regulations at 50 CFR Section 402, for every activity proposed for a Department of the Army permit, the Corps is required to evaluate the effects of each proposal on any listed threatened or endangered species or its designated critical habitat. To make the initial determination of the potential effect that each proposal would have on the listed species or designated critical habitat, the Corps has to rely on the best available scientific and commercial data. In the case of the Florida panther, we are aware that the U.S. Fish and Wildlife Service (Service) is in the process of developing a regulatory tool and a conservation strategy for the Florida panther that utilizes new information from the Multi-species/Ecosystem Recovery Implementation Team (MERIT) team. These may be useful to the Corps in its evaluations of an activity's effect on the Florida panther, however, it is our understanding that they will not be available for use until sometime in the future. In the interim, we are taking immediate steps to incorporate new information we received from the Service into an interim tool (Florida Panther Key) which the Corps' Project Managers can utilize to assist them in their effect determinations.

Effective immediately, the Corps will utilize the attached Florida Panther Key, and accompanying telemetry map, both dated July 1, 2003, to evaluate a project's potential to adversely impact the Florida panther. We intend to use this key and map until the Service provides us with the product it is developing in a usable form. For those projects keying to a "no effect" nothing more will need to be done regarding the Florida panther; for those which key to a "may affect not likely to adversely affect," the Corps will request the Service's written concurrence with our determination; and for those keying to a "may affect," the Corps will request the Service to initiate formal consultation.

Also, to provide additional protection to the Florida panther and to ensure that the general public does not unknowingly violate NWP General Condition #11 and the ESA through the inappropriate use of NWPs 12, 14, 39 and 40, in the Florida panther consultation area, the Corps proposes to add a regional condition to each of those NWPs which eliminates all thresholds for the preconstruction notification (PCN) requirement. This condition will only apply within the Florida panther consultation area. If the thresholds for the PCN are eliminated, all activities proposed in the Florida panther consultation area that could potentially qualify for one of the above-listed NWPs will require a PCN, and will be evaluated by the Corps for potential impacts to the Florida panther. The proposed regional condition for NWPs 12, 14, 39 and 40 is:

Corps-only PCN required prior to the start of any activity within the Florida panther consultation area.

We intend to implement the Florida Panther Key immediately and we include a copy of the key, accompanying map, and our rationale in this public notice for information only. However, we are soliciting comments on our proposal to eliminate all thresholds for the PCN for NWPs 12, 14, 39 and 40 in the Florida panther consultation area. If you have comments specific to the proposal to eliminate all thresholds for the PCN in the Florida panther consultation area, please transmit them within 30 days of the date of this public notice to Stuart L. Santos at the letterhead address or by e-mail to: stuart.l.santos@saj02.usace.army.mil



John R. Hall, Ph.D.
Chief, Regulatory Division

Florida Panther Effect Determination Key
July 1, 2003

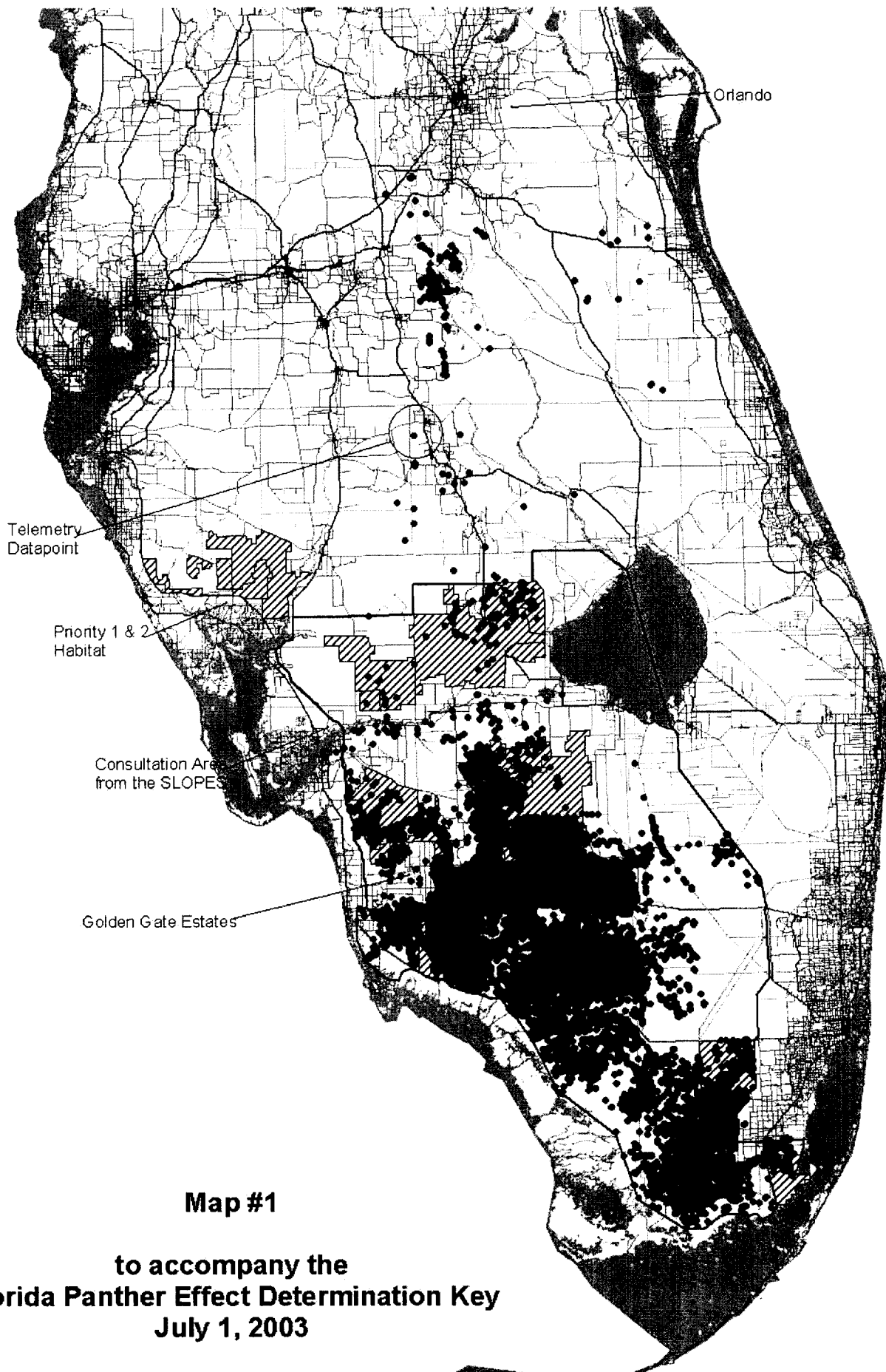
- A. Project is within the consultation area¹B
Project is not within the consultation area..... *No effect*
- B. Project is within 2 miles of a telemetry point¹D
Project is not within 2 miles of a telemetry point.....C
- C. Surrounding land cover within 1 mile **is suitable**² for panther dispersal.....D
Surrounding land cover within 1 mile **is not suitable**³ for panther dispersal.....*No effect*
- D. Project is for a single-family residence on a lot > 1 acre.....*May affect not likely to adversely affect*
Project is not for a single-family residence on a lot > 1 acre.....E
- E. Project is for a single-family⁴ residence on a lot < 1 acre.....*May affect*
Project is not for a single-family⁴ residence on a lot < 1 acre.....F
- F. Project is for a new subdivision or is other than a single-family residence and is constructed on 1-40 acres.....G
Project is for a new subdivision or is other than a single-family residence and is constructed on < 1 or > 40 acres.....*May affect*
- G. Project will preserve a portion of the site of sufficient size and configuration to maintain panther crossing the property.....*May affect not likely to adversely affect*
Project will not preserve a portion of the site of sufficient size and configuration to maintain panther crossing the property.*May affect*

¹- See attached map, dated July 1, 2003, showing the boundary of the consultation area and the telemetry points.

²- Land cover suitable for dispersal contains one or more of the following: forested; forested and row crop mixture; forested and grove mixture; generally rural in nature (residential with > 1 acre lots with forested cover, with or without small farms, tree nurseries, pasture)

³- Land cover not suitable for dispersal is generally urban, i.e., > 50% developed with: (1) residential subdivisions with lot sizes < 1 acre; (2) industrial sites; (3) commercial sites.

⁴- If project site was in a >50% built-out subdivision, then it would be considered "not suitable for dispersal" under couplet C above. Couplet E is for existing platted subdivisions that are < 50% build out.



Rationale for the
Florida Panther Effect Determination Key
July 1, 2003

A. Project is/is not within the consultation area. The consultation area is referenced in a U.S. Fish and Wildlife (Service) letter dated August 18, 2000, that provided the interim Standard Local Operating Procedures for Endangered Species (SLOPES) for the Florida panther. The SLOPES states "...the Service has developed an interim map (attached) which delineates an area within which a proposed project has the potential to affect the Florida panther."

B. Project is/is not within 2 miles of a telemetry point. Telemetry includes observations of radio-collared panthers as well as reports of road-crossing mortalities. Radio-collared panther locations are collected using fixed-wing aircraft during daylight hours. This probably locates the panthers while resting since they typically roam during non-daylight hours. Even though night telemetry data are not available, we must recognize that other habitat types may be used by the panther that are not reflected in the daylight data. Recognizing that panthers do roam at night for hunting and travel within their home ranges, areas that surround each telemetry point should be included as locations where the panther may have been either traveling to or from a telemetry point.

The distance of 2 miles is a conservative value. During a telephone conference with the Service on June 23, 2003, the Service suggested looking at a one-mile radius around a project when assessing affect. Another approach to establishing a distance is to use the buffer distance suggested in "Panthers and forests in south Florida: an Ecological Perspective" (Comiskey, E. J., O. L. Bass, Jr., L. J. Gross, R. T. McBride, and R. Salinas. 2002. Conservation Ecology 6(1): 18.). In that habitat analysis, all land within a circle with a radius equal to the mean movement distance between sequential telemetry locations was included as panther habitat. They calculated a mean of 6.6 km (4.1 miles) for males and 3.2 km (1.99 miles) for females. However, for couplet "B" of this key, we are more interested in identifying presence or occurrence of the panther, not simply potential habitat. Potential habitat is the subject of couplet "C." Therefore, we want to include areas to which the panther may have traveled between telemetry flights. Since the telemetry flights are normally three times a week, the time between sequential data points represents approximately 2 days. Therefore, the mean distance traveled by the male (4.1 miles) divided by the time between telemetry points (2 days) equals roughly 2 miles/day. Areas within 2 miles of a telemetry point may or may not have been explored by the panther during night movements; however, because of potential utilization they warrant a closer examination.

C. Surrounding land cover within 1 mile is/is not suitable for panther dispersal. Since only a portion of panthers are radio-collared (e.g., 48 of the 78 known panthers in 2001), the vegetation cover must also be considered. The telemetry data have been used to define resting and denning habitat types, which are generally some type of forested

cover. However, in hunting, panthers will naturally look at areas that contain a variety of cover types providing a mix of ecotones, which serve as habitat for deer or other prey. Therefore, the definition of suitable land cover in footnote 2 does not solely include forested lands.

D. Project is for a single-family residence on a lot > 1 acre. This criterion describes the typical "estates" type of subdivision where much of the lot will either remain undeveloped or at most be converted to pasture (yard) or crop land. Although the amount of human disturbance makes such areas not as suitable for prey or for day-beds, panthers have been known to cross these areas to other parts of their range. Since most of these subdivisions have been partially built out, the prey and denning uses of these areas have already been largely lost and the incremental addition of houses is not impacting these functions further.

E. Project is for a single-family residence on a lot < 1 acre. Very little to none of the lot is expected to remain in condition suitable for panther travel. See buffer discussion below in G.

F. Project is for a new subdivision or is other than a single-family residence and is constructed on < 1 or > 40 acres. Such projects need individual evaluation of the site plans. For example, in a new subdivision, clustering or other such techniques could minimize adverse effects on the panther. Commercial or industrial activity, even though planned on smaller lot sizes, could have more deleterious effects on the panther than single-family residences.

G. Project is for a new subdivision or is other than a single-family residence and is constructed on 1-40 acres and will preserve a portion of the site sufficient in size and configuration to not hinder panther crossing the property. Although in a residential subdivision clustering and other site designs could minimize adverse effects, on small lots there is not much option but to "build in the front and preserve the back." If a portion remains undeveloped that provides sufficient distance from human disturbance and if that portion is configured to align with other undeveloped portions of neighboring properties, it is expected that the panther would not be deterred from crossing the property. In general, locations where the land has been subdivided to 40 acres and below are already partially built out and so the primary use by panthers is for traveling. What is a "sufficient size" will depend on the nature of the activity and plant cover. While there is literature that describes various buffer widths to attenuate the human-caused noise and visual disturbance, there are no known ones specifically for the panther. A distance of 300 feet has been used in assessments, including one proposed in the paper "Wide-ranging carnivores and development permits: constructing a multi-scale model to evaluate impacts on the Florida Panther (Maehr, D.S., and Deason, J.P., Clean Technologies and Environmental Policy, Volume 3, 2002, pp. 398-406). For example, for a 5 acre lot measuring approximately 330 ft by 660 ft, development could take place, say, in the front 200 feet, then after subtracting a 300 ft buffer there would be a 160 ft back part of the property that could be considered to be less likely to be affected by

human disturbance. For a 1 acre or less lot, it is highly unlikely that sufficient area will be available that is suitable for use by panthers during transit.